

Matter for 'Know Your Ethics' – August, 2013 issue of the CA Journal

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Q. What is Code of Ethics?

A. Every profession has its own Code of Ethics.

The Chartered Accountants Act, 1949 has been enacted by the Parliament for the regulation of the profession of Chartered Accountants and for the purpose of carrying out the object of the Act, the Chartered Accountants Regulations, 1988 have been enacted.

The Act has two schedules i.e. First Schedule & Second Schedule.

The First Schedule has four parts:

Part I - Professional misconduct in relation to Chartered Accountants in Practice.

Part II - Professional misconduct in relation to Members of the Institute in Service.

Part III - Professional misconduct in relation to Members of the Institute generally.

Part IV - Other Misconduct in relation to the members of the Institute generally.

The Second Schedule has three parts:

Part I - Professional misconduct in relation to Chartered Accountants in Practice.

Part II - Professional misconduct in relation to Members of the Institute generally.

Part III - Other misconduct in relation to members of the Institute Generally.

These two schedules along with the decisions of the Courts on professional misconducts, decisions, directions, guidelines, statements, clarifications and also interpretations of the Council on the various clauses of these two schedules constitute the Code of Ethics for the accountancy profession.

Part-A of the Code of Ethics, 2009 has been introduced in line with the IFAC Code in compliance of membership obligation of the ICAI. This part of the Code establishes a conceptual framework for all members to ensure compliance with five fundamental principles of professional ethics, namely, integrity, objectivity, professional competency and due care, confidentiality and professional behavior. Under the framework, all Chartered Accountants are required to identify the threats to these fundamental principles and apply safeguards to ensure that the

principles are not compromised. The framework applies to all Chartered Accountants, whether in practice or in service.

Q. What is the professional or other misconduct?

A. Section 22 of the Act defines professional or other misconduct as follows:-

For the purposes of this Act, the expression "professional or other misconduct" shall be deemed to include any act or omission specified in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances.

What constitutes 'misconduct under any other circumstances' has to be determined on case to case basis keeping in view the facts of the circumstances of each case. Fraud, intention to deceive and committing an act which affects the public or society at large could be in the ambit of such misconduct. Following are few examples of 'misconduct under any other circumstances' by a member:-

1. Conviction by a competent Court for an offence involving moral turpitude punishable with imprisonment or for an offence not of a technical nature committed by a member in his professional capacity.
2. Retention of books and documents of the client and failure to return these to the client on request without a reasonable cause.
3. Material misrepresentation e.g. misrepresenting to a firm, while seeking employment as an accountant, that he has worked for three years as a senior assistant with another firm.
4. Publishing an advertisement in a newspaper with malafide intention to malign any person.
5. Using objectionable, derogatory and abusive language or/and making irrelevant, incoherent irresponsible and insane statements in his correspondence with a person.

Q. What is the distinction between the two schedules?

A. The two schedules are distinguished on the basis of gravity of misconduct and quantum of punishment for the misconduct, the second schedule pertaining to comparably graver misconduct and higher punishment.

Q. What will be the procedure where a member is guilty of charges both under the First Schedule and Second Schedule to the Act?

A. The procedure to be followed when a member is accused of misconduct under both schedules is the same which is followed for misconduct under the second schedule.

Q. Can a member in practice render Management Consultancy and other services?

A. Yes, however, the areas covered under the Management Consultancy and other services have been summarized by the Council. The "Management Consultancy and other services" may be referred at pages 103 -105 of the Code of Ethics.

Q. Whether a member in practice is permitted to undertake the management of NRI funds?

A. No, the member is not permitted to undertake such assignment because the same is not covered under "Management Consultancy and Other Services" permitted to be rendered by the practicing members of the Institute.

Q. Can a Chartered Accountant provide 'Portfolio Management Services' (PMS) as part of CA practice?

A. No, the Explanation to Clause (xix) of the definition of "Management Consultancy and other Services" expressly bars the activities of broking, underwriting and Portfolio Management.

Q. Whether a Chartered Accountant in practice is required to obtain any trade license for practicing?

A. No, a Chartered Accountant in practice is not required to obtain any trade licence for practicing as a professional. The certificate of practice issued by the Institute is the only requirement to practice as a Chartered Accountant.

Q. Can a Chartered Accountant in practice work as a 'CollectionAgent/Recovery Agent'?

A. No, a Chartered Accountant in practice cannot work as a Collection Agent. However, he can act as a Recovery Consultant as provided in clause (xxv) of "Management Consultancy and other Services".

Q. Whether a practicing Chartered Accountant can agree to select and recruit personnel, conduct training programmes and workstudies for

and on behalf of a client?

A. Yes. The expression "Management Consultancy and other Services" defined by the Council includes both personnel recruitment and selection and conducting training programmes and work-studies. Therefore, a Chartered Accountant in practice shall not commit any professional misconduct by rendering such services for and on behalf of the client.

Q. Can a member in practice have a branch office/additional office/temporary office?

A. Yes, a member can have a branch office. In terms of Section 27 of the Act, if a Chartered Accountant in practice or a firm of Chartered Accountants has more than one office in India, each one of such offices should be in the separate charge of a member of the Institute. Failure on the part of a member or a firm to have a member in charge of its branch and a separate member in case of each of the branches, where there are more than one, would constitute professional misconduct. However, exemption has been given to members practicing in hill areas subject to certain conditions. The conditions are:

1. Such members/firm be allowed to open temporary offices in a city in the plains for a limited period not exceeding three months in a year.
2. The regular office need not be closed during this period and all correspondence can continue to be made at the regular office.
3. The name board of the firm in the temporary office should not be displayed at times other than the period such office is permitted to function as above.
4. The temporary office should not be mentioned in the letterheads, visiting cards or any other documents as a place of business of the member/firm.
5. Before commencement of every winter it shall be obligatory on the member/firm to inform the Institute that he/it is opening the temporary office from a particular date and after the office is closed at the expiry of the period of permission, an intimation to that effect should also be sent to the office of the Institute by registered post.

The above conditions apply to any additional office situated at a place beyond 50 km from the municipal limits in which any office is situated.

It is to be noted that the requirement of Section 27 in regard to a member being in charge of an office of a Chartered Accountant in practice or a firm of such Chartered Accountants shall be satisfied only if the member is actively

associated with such office. Such association shall be deemed to exist if the member resides in the place where the office is situated for a period of not less than 182 days in a year or if he attends the said office for a period of not less than 182 days in a year or in such other circumstances as, in the opinion of the Executive Committee, establish such active association.

It is necessary to mention that the Chartered Accountant in charge of the branch of another firm should be associated with him or with the firm either as a partner or as a paid assistant. If he is a paid assistant, he must be in whole time employment with him.

However, a member can be in charge of two offices if they are located in one and the same accommodation.

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